

PUBLIC VERSION

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

**BELLSOUTH
TELECOMMUNICATIONS, LLC
d/b/a AT&T NORTH CAROLINA and
d/b/a AT&T SOUTH CAROLINA**

Complainant,

v.

DUKE ENERGY PROGRESS, LLC,

Defendant.

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OCT 19 2020

**PSC SC
CLERK'S OFFICE**

Proceeding No.: 20-293

Bureau ID No.: EB-20-MD-004

**DUKE ENERGY PROGRESS, LLC'S RESPONSES TO
AT&T'S FIRST SET OF INTERROGATORIES**

Defendant Duke Energy Progress, LLC ("DEP"), pursuant to Rule 1.730 and in accordance with the Enforcement Bureau's September 22, 2020 Notice of Complaint, responds as follows to the "First Set of Interrogatories" served by Complainant BellSouth Telecommunications, LLC d/b/a AT&T North Carolina and d/b/a AT&T South Carolina ("AT&T").

General Response

DEP adopts and incorporates, as if fully set forth herein, its September 29, 2020 Opposition and Objections to AT&T's First Set of Interrogatories. All responses set forth herein are subject to the September 29, 2020 Opposition and Objections to AT&T's First Set of Interrogatories.

The responses set forth herein are based on information presently known and available to DEP. DEP reserves the right to supplement these responses as additional information becomes known or available through the discovery process or otherwise.

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ownership costs being carried by the party owning more than its targeted share of the jointly used network.

The Joint Use Agreement established the following initial rates for each party: AT&T, as licensee, was required to pay DEP █████ per pole, and DEP, as licensee, was required to pay AT&T █████ per pole. AT&T's initial rate is representative of approximately █████ joint use pole ownership ($\$ \text{█████} + \$ \text{█████} = \$ \text{█████}$; $\$ \text{█████} / \$ \text{█████} = \text{█████} \%$), and DEP's initial rate represents approximately █████% joint use pole ownership ($\$ \text{█████} / \$ \text{█████} = \$ \text{█████} \%$). Per the agreement, the rates are adjusted each year according to the Handy Whitman Index for FERC Account 364 (which is representative of industry pole costs trends). In the most recent billing year, the parties paid the following rates: AT&T, as licensee, paid DEP \$█████ per pole, and DEP, as licensee, paid AT&T \$█████ per pole. Therefore, AT&T is still paying a rate that approximates █████% joint use pole ownership ($\$ \text{█████} + \$ \text{█████} = \$ \text{█████}$; $\$ \text{█████} / \$ \text{█████} = \text{█████} \%$), and DEP is still paying a rate that approximates █████% joint use pole ownership ($\$ \text{█████} / \$ \text{█████} = \text{█████} \%$).

Even setting aside the unique cost sharing relationship in Article XIII.C of the Joint Use Agreement, DEP's data indicates that AT&T is actually occupying, on average, █████ feet of space on jointly used poles owned by DEP. And this amount does not include the communication worker safety zone (a/k/a "safety space"), which is typically 40" (3.33 feet). If AT&T were a mere licensee (like a CATV or CLEC) without a joint use agreement, AT&T would be assigned the cost of all space it occupies or causes, which would include the 3.33 feet of safety space on DEP's poles. DEP does not need safety space on its own poles and would not have built safety space on its distribution poles but for the Joint Use Agreement, as this space serves no purpose in the provision of electric service. When the average amount of space AT&T occupies on DEP's poles is combined with the 3.33 feet of safety space, this allocation of space would yield per pole rates

INTERROGATORY NO. 2: Beginning with the 2015 rental year, identify all entities that have had a Joint Use Agreement or License Agreement with Duke Energy Progress and state whether the entity is an incumbent local exchange carrier, CLEC, cable company, or wireless provider.

RESPONSE: This response is subject to and made without waiving the general objections stated in the September 29, 2020 Opposition and Objections to AT&T First Set of Interrogatories. DEP is identifying all entities responsive to this request, as well as those entities with a Wireless Telecommunication Pole Attachment License Agreement. Please see the charts for 2017 through 2019, which are attached to these Responses as **Exhibit 1**. DEP does not know whether any entity with a Wireless Telecommunication Pole Attachment License Agreement is actually a “wireless provider,” as that term is used in the interrogatory.

INTERROGATORY NO. 3: State the rates, terms, and conditions of all Joint Use Agreements and License Agreements with Duke Energy Progress that were in effect at any time from the 2015 rental year forward. Include in your response the name of the entity that is a party to the Joint Use Agreement or License Agreement with Duke Energy Progress and the dates on which the Joint Use Agreement or License Agreement with Duke Energy Florida was in effect. In lieu of quoting each rate, term, and condition from each Joint Use Agreement and License Agreement, Duke Energy Progress may produce a copy of each Joint Use Agreement and License Agreement.

RESPONSE: See DEP’s September 29, 2020 Opposition and Objections. Subject to and without waiving these objections, please see the charts provided as **Exhibit 1** in response to interrogatory

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calculations, inputs, assumptions, and source data used to quantify the monetary value of each claimed advantage or benefit.

RESPONSE: See DEP's September 29, 2020 Opposition and Objections. Subject to and without waiving these objections, DEP intends to identify and quantify the advantages to AT&T under its Joint Use Agreement, as compared to DEP's CATV and CLEC licensees, in the answer DEP files on or before November 13, 2020.

INTERROGATORY NO. 6: Beginning with the 2015 rental year, for each claimed advantage or benefit identified in response to Interrogatory 5, state by year the amount of money that Duke Energy Progress collected from each entity identified in response to Interrogatory 2 concerning that competitive benefit. Include in your response all formulas, calculations, inputs, assumptions, and source data used to invoice these amounts.

RESPONSE: See DEP's September 29, 2020 Opposition and Objections. To the extent the advantage or benefit involves an amount paid by a CATV or CLEC licensee during the requested time period (as opposed to something of value that AT&T receives, but a CATV or CLEC licensee does not receive), this information will be provided with the answer DEP files on or before November 13, 2020.

INTERROGATORY NO. 7: Beginning with the 2015 rental year, state the rate of return used by Duke Energy Progress in the calculation of rates under 47 C.F.R. § 1.1406(d), including the cost of debt, cost of equity, and capital structure, and, if different, Duke Energy Progress's state-authorized weighted average cost of capital and/or weighted cost of equity, including, as

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DEP's blended rates of return for billing years 2017 through 2019, as well as their underlying calculations, are provided in the chart below:

	2017 Billing Year	2018 Billing Year	2019 Billing Year ²
NC Adjusted Rate Base	568,732,396	584,299,380	584,299,380
SC Adjusted Rate Base	123,609,003	125,020,766	125,020,766
Total Adjusted Rate Base	692,341,399	709,320,146	709,320,146
NC as % of Total Rate Base	82.15%	82.37%	82.37%
SC as % of Total Rate Base	17.85%	17.63%	17.63%
NCUC Authorized RoR	7.55%	7.17%	7.17%
PSCSC Authorized RoR	7.20%	7.20%	7.20%
Blended Rate*	7.49%	7.17%	7.17%

* (NCUC Authorized RoR x NC as % of Total Rate Base) + (PSCSC Authorized RoR x SC as % of Total Rate Base)

As noted in the chart above, DEP uses “adjusted rate bases” for determining the weight to be assigned to each authorized rate of return in a given billing year. The “adjusted rate bases” capture the capital costs associated with DEP’s distribution poles.

INTERROGATORY NO. 8: Identify all data regarding poles jointly used by Duke Energy Progress and AT&T, including all survey, audit or sampling data concerning pole height, the average number of attaching entities, the space occupied by Duke Energy Progress, AT&T, and any other entity. Include in your response when the data was compiled or collected, the entity or entities that compiled (sic) or collected it, the accuracy requirements, if any, imposed or related to the compilation or collection of the data, and the rules, parameters, guidelines, upon which the data was collected.

RESPONSE: The average number of attaching entities on DEP poles occupied by AT&T is ■■■■. This average includes DEP as an attaching entity. This data comes from an inventory of DEP’s

² The 2018 North Carolina Retail Cost of Service was not yet available when the annual pole attachment rental rates were calculated for billing year 2019; therefore, DEP used data from billing year 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this October 14, 2020, a true and correct copy of Duke Energy Progress, LLC's Responses to AT&T's First Set of Interrogatories was filed with the Commission via ECFS and was served on the following (service method indicated):

Robert Vitanza Gary Phillips David Lawson AT&T SERVICES, INC. 1120 20th Street NW, Suite 1000 Washington, DC 20036 (by U.S. Mail)	Marlene H. Dortch, Secretary Federal Communications Commission 445 12th Street, SW Washington, DC 20554 (by ECFS only)
Christopher S. Huther Claire J. Evans Frank Scaduto WILEY REIN LLP 1776 K Street NW Washington, DC 20006 chuther@wileyrein.com cevans@wileyrein.com fscaduto@wileyrein.com (by E-Mail)	Mike Engel Federal Communications Commission Market Disputes Resolution Division Enforcement Bureau Michael.Engel@fcc.gov (by E-Mail)
Rosemary H. McEnery Federal Communications Commission Market Disputes Resolution Division Enforcement Bureau 445 12th Street, SW Washington, DC 20554 Rosemary.mcenery@fcc.gov (by E-Mail)	Kimberly D. Bose, Secretary Federal Energy Regulatory Commission 888 First Street, NE Washington, DC 20426 (by U.S. Mail)
Charlotte A. Mitchell, Chair North Carolina Utilities Commission 4325 Mail Service Center Raleigh, NC 27699-4300 (by U.S. Mail)	Justin T. Williams, Chairman Public Service Commission of South Carolina 101 Executive Center Dr., Suite 100 Columbia, South Carolina 29210 (by U.S. Mail)

/s/ Eric B. Langley
OF COUNSEL

EXHIBIT 1

(Confidential – Withheld from Public Version)

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EXHIBIT 3

(Confidential – Withheld from Public Version)

From: [Eric Langley](#)
To: [Lisa Kennedy](#)
Subject: FW: FCC ECFS Filing Confirmation
Date: Wednesday, October 14, 2020 4:50:34 PM

-----Original Message-----

From: no-reply@fcc.gov <no-reply@fcc.gov>
Sent: Wednesday, October 14, 2020 4:49 PM
To: Eric Langley <eric@langleybromberg.com>
Subject: FCC ECFS Filing Confirmation

Thank you for your submission to the FCC Electronic Comment Filing System (ECFS).
Please Note that your filing will not be available for searching until it has been reviewed and posted by the FCC.

Confirmation Number: 2020101417747027

Proceeding(s): 20-293 : BellSouth Telecommunications, LLC d/b/a AT&T North Carolina and d/b/a AT&T South Carolina v. Duke Energy Progress, LLC

Filer(s): Duke Energy Progress, LLC

Author(s): Eric B. Langley, Robin F. Bromberg, Robert R. Zalanka

Law firm(s): Langley & Bromberg LLC

Type of Filing: ANSWER TO INTERROGATORY

File Number:

Report Number:

Bureau ID Number: EB-20-MD-004

Documents(s) Attached: Duke Energy Progress Responses to ATT Interrogatories (PUBLIC VERSION).pdf, Duke Energy Progress Compiled Exhibits (PUBLIC VERSION) to ATT Interrogatories.pdf

Address: 2700 U.S. Highway 280 Suite 240E, Birmingham, AL 35223